NG CHOH LENG

v.

LOH CHE KWET

HIGH COURT MALAYA, MELAKA
LOW HOP BING J
[CIVIL APPEAL NO: 11-8-2001]
11 OCTOBER 2001

CIVIL PROCEDURE: *Summary judgment - Preliminary requirement for prima facie case - Whether complied with - Whether plaintiff entitled to summary judgment - Subordinate Courts Rules 1980, O. 26A*

NEGOTIABLE INSTRUMENTS: *Cheque - Dishonour of cheque - Parties to cheque - Whether party thereto for value and holder in due course*

The plaintiff's claim against the defendant was founded on eight cheques drawn by the defendant in favour of the plaintiff which were dishonoured upon presentation for payment. The learned magistrate granted the plaintiff summary judgment under O. 26A of the Subordinate Court Rules 1980 ('SCR'). Thus the appeal by the defendant.

Held:

[1] The plaintiff had complied with the preliminary requirements of SCR for establishment of a *prima facie* case, which entitled him to judgment and it was the prerogative of the defendant to prove otherwise. (p 33 d-f)

[2] It is trite that when a party endorsed his signature on a bill of exchange, he was *prima facie* deemed to have become a party thereto for value. In the instant case the defendant had by his own admission vouched for the fact that he had signed all the eight cheques in dispute. The plaintiff by virtue of being the holder of the said cheques was deemed to be a holder for value in due course. The defendant's submission to the contrary was of no merit. (p 33 g-h)

[3] The cheques had apparently been forwarded to the plaintiff as a result of an antecedent debt or liability by two other third parties. *Albeit* that the allegations or denials did not rebut the *prima facie* presumption that the defendant was a party thereto for value or that the plaintiff was a holder in due course. (p 34 a-b)

[Appeal dismissed with costs.]

Case(s) referred to:
Liang Tai Trading Company Ltd v. Toh Thye Guan [1970] 2 MLJ 269 ***(foll)***
National Company For Foreign Trade v. Kayu Raya Sdn Bhd [1984] 2 CLJ 220; [1984] 1 CLJ (Rep) 283 ***(foll)***
Ong Guan Hua v. Chong [1963] 20 MLJ 6 ***(foll)***
Wong Tham Meng v. Tiang Eng & Anor [2001] 6 CLJ 548 ***(foll)***

Legislation referred to:
Bills of Exchange Act 1949, ss. 27(1), 30(1), (2)
Civil Law Act 1956, s. 11
Rules of the High Court 1980, O. 14 r. 2
Subordinate Courts Rules 1980, O. 26A r. 2

For the defendant - Kesavan (Leslie Bala); M/s Bala Gopal & Assoc
For the plaintiff - Ong Siew Ling; M/s Chee Siah Lee Kee & Partners

Reported by K Ganesh

JUDGMENT

Low Hop Bing J:

Appeal

This is an appeal by the defendant *vide* encl. (1) against the decision of the learned magistrate delivered on 31 January 2001, giving the plaintiff summary judgment under O. 26A of the Subordinate Courts Rules 1980 in the sum of RM20,000 together with interest at 8% per annum under s. 11 of the Civil Law Act 1956 from 8 May 2000 to the date of judgment and thereafter interest at 8% per annum on the said judgment sum from the date of judgment to the date of realisation.

For ease of reference, the parties herein shall be referred to as the plaintiff and the defendant respectively.

The Pleading

The plaintiff's claim against the defendant is for a sum of RM20,000 and founded on eight cheques drawn by the defendant in favour of the plaintiff dated 7 September, 7 October and 7 November, in 1999 and 7 January, February, March, April and May in 2000 respectively. When the plaintiff presented these cheques for payment, they were dishonoured as the defendant has "stopped payment". Despite plaintiff's repeated demand for payment thereof, the defendant has failed, refused and or neglected to pay the same.

The defendant admitted drawing the aforesaid eight cheques but pleaded that the plaintiff is not entitled to payment on these cheques on the ground that there was no consideration.

Submission For Defendant

Encik Kesavan and Encik Leslie Bala, learned counsel for the defendant, submitted that the plaintiff has not given any consideration for the aforesaid eight cheques and that there is a triable issue ie, whether the plaintiff is a "holder for value". He added that plaintiff is not entitled to raise the issue of forebearance to sue as a sufficient consideration since it has not been pleaded by the plaintiff. In the circumstances, they contended that no summary judgment should be given in favour of the plaintiff.

Contention For Plaintiff

Cik Ong Siew Ling, learned counsel for the plaintiff, submitted that under s. 27(1) of the Bills of Exchange Act 1949, valuable consideration for a bill may be constituted by any consideration sufficient to support a simple contract. She added that plaintiff's forebearance to sue the defendant's wife ie, Lee Nyonya is a sufficient consideration.

Decision Of The Court

From the pleadings and the affidavits filed by the parties herein respectively, there is no dispute that the statement of claim has been served on the defendant who has entered an appearance and that the plaintiff's affidavit in support of the application has complied with O. 26A r. 2 of the Subordinate Courts Rules 1980 (= O. 14 r. 2 of the Rules of the High Court 1980). It was held by the Federal Court in *National Company For Foreign Trade v. Kayu Raya Sdn. Bhd.* [1984] 2 CLJ 220; [1984] 1 CLJ (Rep) 283 that once the plaintiff has fulfilled these preliminary requirements, a *prima facie* case has been established by the plaintiff and he becomes entitled to judgment. The burden then shifts to the defendant to satisfy the court why judgment should not be given against him. (See also *Wong Tham Meng v. Tiang Eng & Anor* [2001] 6 CLJ 548).

In resisting the plaintiff's application for summary judgment, the defendant relied on the absence of consideration and contended that the plaintiff is not a holder for value. This is the sole issue raised for the defendant in the defence. The short answer to the issue raised for the defendant is to be found in s. 30(1) of the Bills of Exchange Act 1949 (Act 204) which provides that every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value. As the defendant's signature appears on all the aforesaid eight cheques, the defendant is *prima facie* deemed to have become a party thereto for value. And pursuant to s. 30(2), *ibid,* the plaintiff who is the holder of these cheques is *prima facie* deemed to be a holder in due course. These statements of the law had been stated with complete clarity by Thomson, CJ (as he then was) in the Court of Appeal judgment in *Ong Guan Hua v. Chong* [1963] 20 MLJ 6 and by Choor Singh, J of the Singapore High Court in *Liang Tai Trading Company Ltd. v. Toh Thye Guan* [1970] 2 MLJ 269.

Further, the defence has also clearly demonstrated that these cheques were given by the defendant to the plaintiff in respect of certain purchases made by two other third parties *viz*. Lee Nyonya and Ong Chian King. The defendant's affidavit affirmed on 31 October 2000 was to the effect that these eight cheques were given to the plaintiff as a result of an antecedent debt or liability in relation to the shares trading transactions of the aforesaid Lee Nyonya and Ong Chian King, but all these transactions appear to be disputed by the defendant. The allegations of facts or denials do not in my view rebut the *prima facie* presumption that the defendant is a party thereto for value or that the plaintiff is a holder in due course. In the light of this finding, I do not feel the necessity to consider other submissions which were outside the pleadings, but would nevertheless record a word of commendation for the efforts of learned counsel.

In the circumstances, I am of the view that there is no triable issue and that the decision of the learned magistrate giving summary judgment in favour of the plaintiff under O. 26A is correct and is hereby upheld. The appeal is dismissed with costs.